

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)

PCC-Validation)
200 South Boulevard West)
Pontiac, Michigan)

M1 Concourse, LLC)

PURCHASER)

Docket Number:

SETTLEMENT AGREEMENT,
AND COVENANT NOT TO SUE
UNDER THE AUTHORITY OF THE
COMPREHENSIVE ENVIRONMENTAL
RESPONSE, COMPENSATION AND
LIABILITY ACT OF 1980,
42 U.S.C. § 9601 *et seq.*, AS AMENDED, AND
THE SOLID WASTE DISPOSAL ACT,
42 U.S.C § 6901, *et seq.*, AS AMENDED

V - W - 14 - C - J02

I. INTRODUCTION

1. This Settlement Agreement and Covenant Not to Sue ("Settlement Agreement") is made and entered into by and between the United States Environmental Protection Agency ("EPA") and M1 Concourse, LLC ("Purchaser") (collectively the "Parties"). The Settlement Agreement relates to the PCC Validation Site, located in Pontiac, Oakland County, Michigan.

2. This Settlement Agreement is entered into pursuant to (1) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9601, *et seq.*, and (2) the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 ("RCRA"), 42 U.S.C. § 6901, *et seq.* The authority of the Administrator of EPA has been delegated to the Regional Administrators of the EPA, and further delegated to the Director, Superfund Division, Region 5 and the Director, Land and Chemicals

Division, Region 5. The Purchaser consents to and will not object to the United States' jurisdiction to enter into this Settlement Agreement or implement its provisions.

3. The Assistant Attorney General of the Environment and Natural Resources Division, United States Department of Justice, approves this Settlement Agreement pursuant to the authority of the Attorney General to settle claims of the United States, which, in the circumstances of this settlement, has been delegated to the Assistant Attorney General of the Environment and Natural Resources Division.

4. The Settlement Agreement is also subject to the terms of the Environmental Response Trust Consent Decree and Settlement Agreement entered by the United States Bankruptcy Court for the Southern District of New York in *In re: Motors Liquidation Company, et al., f/k/a General Motors Corp., et al.*, Case No. 09-50026 (REG) ("the General Motors Consent Decree" or "Consent Decree") (See Attachment 1.) Under the terms of the Consent Decree, certain properties and other assets of General Motors Corp., including the Site, were placed into the Revitalizing Auto Communities Environmental Response ("RACER") Trust, an environmental response trust, in order to be cleaned up and positioned for redevelopment. The provisions of this Settlement Agreement rely on the unique facts and circumstances of the General Motors Consent Decree and nothing in this Settlement Agreement shall be treated as having any precedential value in any other agreements between EPA and prospective purchasers of sites that may be subject to the requirements of CERCLA and/or RCRA.

5. The Site is currently owned by the Revitalizing Auto Communities Environmental Response ("RACER") Trust and, due to the unique circumstances of the General Motors Corp. bankruptcy matter, if a prospective purchaser of sites subject to the General Motors Consent Decree determines that other statutory protections are not sufficient to address its liability concerns, Paragraph 69 of the General Motors Consent Decree provides that EPA shall select a liability clarification tool, including entering into prospective purchaser agreements, in order to address the liability concerns of prospective purchasers regarding the existing contamination on sites formerly owned by the General Motors Corp.

6. The Site (EPA ID# MID980568836) is located in the City of Pontiac, Oakland County, Michigan, consists of approximately 82 acres of vacant land that was formerly occupied by four manufacturing plants, it encompasses the parcels designated with the following Tax Parcel ID Numbers: 63-64-14-33-302-001, 63-64-14-33-302-002, 63-64-14-33-302-003, 63-64-14-33-351-001, 63-64-14-33-351-012.

7. The Purchaser is a Michigan limited liability company. The Purchaser plans to build a mixed-use real estate development on the Site, including car storage garages, a restaurant, commercial/retail facilities, an office space, an event center, outdoor amphitheater, and auto test track. The Purchaser has requested entry into a prospective purchaser agreement pursuant to Paragraph 69 of the General Motors Consent Decree.

8. The Parties agree to undertake all actions required by the terms and conditions of this

Settlement Agreement. The purpose of this Settlement Agreement is to settle and resolve, subject to reservations and limitations contained herein in Sections V (Access/Cooperation), VI (Due Care), VII (Certification), VIII (United States' Covenant Not to Sue), IX (Reservation of Rights), and XIV (Transfer of Settlement Agreement), the potential liability of the Purchaser and Transferees, if any, for the Existing Contamination at the Site which could otherwise result from Purchaser's and Transferees', if any, purchase of and operation at the Site.

9. The Parties agree that the Purchaser's entry into this Settlement Agreement, and the actions undertaken by the Purchaser in accordance with the Settlement Agreement, do not constitute an admission of any liability by the Purchaser. The resolution of any potential liability of the Purchaser in exchange for the provisions and obligation undertaken by the Purchaser in this Settlement Agreement is of a substantial benefit to EPA and is in the public interest.

II. DEFINITIONS

10. Unless otherwise expressly provided herein, terms used in this Settlement Agreement which are defined in CERCLA and/or RCRA, or in regulations promulgated under CERCLA and/or RCRA, shall have the meaning assigned to them in CERCLA and/or RCRA or in such regulations, including any amendments thereto.

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

b. "Day" shall mean a calendar day unless expressly stated to be a business day.

"Business day" shall mean a day other than a Saturday, Sunday, or federal holiday. In

computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day.

c. "Effective Date" shall be the effective date of this Settlement Agreement as provided in Section XVI (Effective Date).

d. "EPA" shall mean the United States Environmental Protection Agency and any of its successor departments or agencies.

e. "Existing Contamination" shall mean:

- i. any Waste material present or existing on or under the Site as of the effective date of this Settlement Agreement;
- ii. any Waste material that migrated from the Site prior to the effective date of this Settlement Agreement; and
- iii. any Waste material presently at the Site that migrates onto, under, or from the Site after the effective date of this Settlement Agreement.

f. "General Motors Consent Decree" shall mean the Environmental Response Trust Consent Decree and Settlement Agreement Among Debtors, the Environmental Response Trust Administrative Trustee, the United States, fourteen States and the Saint Regis Mohawk Tribe, entered in *In re: Motors Liquidation Co., et al., f/k/a General Motors Corp., et al.*, Case No. 09-50026 (REG) in the United States Bankruptcy Court for the Southern District of New York on March 31, 2011, a copy of which is attached as Appendix 1.

g. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral or a lower case letter.

h. "Parties" shall mean the United States and the Purchaser.

i. "Purchaser" shall mean M1 Concourse, LLC, a limited liability corporation and its officers, directors, and employees.

j. "RACER" or "RACER Trust" shall mean the Revitalizing Auto Communities Environmental Response trust which was established by the United States Bankruptcy Court in 2011 and formed under the laws of the State of New York to clean up and position for redevelopment properties and other facilities that were owned by the former General Motors Corp. before General Motors Corp.'s bankruptcy in 2009.

k. "RCRA" shall mean the Solid Waste Disposal Act of 1976 (also known as the Resource Conservation and Recovery Act), as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §6901 *et seq.*

l. "Settlement Agreement" shall mean this Settlement Agreement and Covenant Not to Sue and all appendices attached hereto (listed in Section XIX of this Settlement Agreement). In the event of conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.

m. "Site" shall mean PCC Validation Site at 200 South Boulevard in Pontiac, Michigan, as depicted in Appendix 2 of the Settlement Agreement, and comprising approximately 82 acres that include the following Tax Parcel ID Numbers: 63-64-14-33-302-001, 63-64-14-33-302-002, 63-64-14-33-302-003, 63-64-14-33-351-001, 63-64-14-33-351-012.

n. "Transferee" shall mean any party to which title to the Site or any portion or interest thereof, including a leasehold, subleasehold or occupancy interest, is transferred through sale, assignment, lease, sublease, transfer or exchange by Purchaser, or by any successor in interest or

assign: (i) for consideration, (ii) involuntarily by operation of law; or (iii) in any other manner from Purchaser, or from any successor in interest or assign, to any other entity or person.

o. "United States" shall mean the United States of America, its departments, agencies, and instrumentalities.

p. "Waste material" shall mean (i) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (ii) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (iii) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (iv) any "hazardous waste" under Section 1004(5) of RCRA, 42 U.S.C. § 6903(5).

III. STATEMENT OF FACTS

11. The Site that is the subject of this Settlement Agreement is a part of the previously operating General Motors Corporation North American Operations, at 200 South Boulevard West, Pontiac, Michigan known as PCC-Validation (the "Site"). The Site is located at 200 South Boulevard West in the City of Pontiac, Oakland County, Michigan. The EPA identification number for the Site is # MID980568836.

12. In June 2009, the former General Motors Corporation ("General Motors Corp.") filed for Chapter 11 reorganization bankruptcy, and subsequently emerged as two new companies. The first of these two new companies, General Motors LLC, purchased the "General Motors" name and certain assets of General Motors Corp., and now operates automobile manufacturing plants in Michigan, Ohio, Indiana, Illinois, and Wisconsin. The second company, Motors Liquidation

Company (“MLC”), retained all of the assets that General Motors LLC did not purchase, as well as the liabilities. This included many properties, including the PCC Validation Site.

13. In March 2011, the bankruptcy court approved MLC’s plan of liquidation (“Plan”). On the effective date of the Plan, 89 sites were placed into an Environmental Response Trust (the “Trust”) administrated by RACER, as defined in Section II, above. Pursuant to the terms of the Plan and the Trust, specific amounts of funds were set aside for each property in the Trust to address environmental contamination at the specific property. RACER has worked and currently works with Federal and State environmental agencies to review, approve and undertake response actions to address the contamination at each property, including the Site. EPA Region 5 is the lead agency for the Site and has overseen, and will continue to oversee, the work conducted by RACER until completion.

14. The Site was occupied by four manufacturing plants before General Motors Corp. acquired them in 1906 (Plant 1) and in 1940 (Plants 3, 4 and 5). During its ownership, General Motors Corp. used the Site for chemical and industrial operations related to car manufacture. The Site is currently owned by RACER Trust and is comprised of asphalt paved parking areas, landscaped areas, an office building located on the northern portion of the Site, and concrete floor slabs remaining from the demolition of Plants 3, 4, and 5. RACER is not currently conducting business operations at the Site. The entire Site is paved and fenced. The Site is zoned as M-2 – Heavy Industrial, and there are currently no infrastructure or active utilities on the Site. Investigations conducted by General Motors Corporation included a Phase I Environmental Site

Assessment (“ESA”) performed in 2006 and Phase II ESA activities performed in 2007 and 2008. The results of the investigations indicated that several constituents were present in soil and groundwater at the Site at levels above the relevant regulatory criteria, including semi-volatile organic compounds (“SVOCs”), polychlorinated biphenyls (“PCBs”), volatile organic compounds (“VOCs”) and light non-aqueous phase liquid (“LNAPL”). Past remedial actions undertaken by General Motors Corp have included investigations, tank removals, soil excavation and disposal, and soil treatment. RACER Trust has and is performing additional site investigations (Phase III ESA) since March 31, 2011. RACER’s goal is to complete all of the cleanup activities required by EPA in order to obtain a “Corrective Action Complete with Controls” determination for the Site. Future anticipated Site controls include: limiting use to non-residential; preventing groundwater usage; maintaining appropriate cover material over certain portions; managing soil properly; and requiring evaluation and possible mitigation of potential vapor intrusion to any new buildings.

15. The Purchaser represents and, for the purposes of this Settlement Agreement, EPA relies on the Purchaser’s representation that it has had no direct involvement in any prior use, contamination or remediation of the Site.

IV. SETTLEMENT AGREEMENT

16. Based on the General Motors Consent Decree, the work that has been and is being conducted by RACER pursuant to the Plan, and in consideration of and exchange for the United States' Covenant Not to Sue in Section VIII of this Settlement Agreement, Purchaser agrees to comply with all provisions of this Settlement Agreement, including, but not limited to, Sections V (Access/Cooperation), VI (Due Care), and VII (Certification) of this Settlement Agreement and Paragraph 73 of the GM Consent Decree, which is attached as Appendix 1.

17. Nothing in this Settlement Agreement would require the Purchaser to undertake any on-going or planned response actions at the Site that are funded and/or undertaken by RACER, so long as the Purchaser complies with the requirements of Sections V and VI.

V. ACCESS/COOPERATION

18. Commencing upon the date that it acquires title to the Site, the Purchaser shall provide access to the Site that will include the right of EPA, its authorized officers, employees, representatives, and all other persons performing response actions under EPA's oversight and/or under direction of these entities, to an irrevocable right of access at all reasonable times to the Site. EPA agrees to provide reasonable notice to the Purchaser of the timing of its own actions to be undertaken at the Site. Notwithstanding any provision of this Settlement Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulation, including any amendments thereto.

19. The Purchaser shall comply with any and all land use restriction and institutional controls on the Site. If the Site is transferred to the Purchaser before RACER has finalized all necessary restrictive covenants, the Purchaser shall file with Oakland County and/or other appropriate units of government all required deed notices and restrictive covenants developed and required by EPA. These restrictions will include a prohibition on the use of groundwater and restrictions on disturbing any cover of contaminated soil in certain areas of the Site unless replaced with equivalent cover.

VI. DUE CARE

20. The Purchaser shall exercise due care at the Site with respect to the Existing Contamination and comply with all applicable local, State, and federal laws and regulations, and all applicable restrictive covenants and deed restrictions. If the Purchaser, its contractors and/or subcontractors encounter any Existing Contamination during its construction and/or operations on the Site, it/they must handle, excavate, and dispose of any encountered Existing Contamination in accordance with all applicable federal and State law. Prior to taking any action with regard to Existing Contamination, the Purchaser shall notify the EPA.

21. In the event the Purchaser becomes aware, after the Effective Date, of any action or occurrence which causes or threatens a release of Waste material at or from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, and such action or occurrence is not being addressed with funds from the Trust, Purchaser shall immediately take all appropriate action to prevent, abate, or minimize such

release or threat of release. In the event that Purchaser fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Purchaser shall reimburse EPA all costs of the response action not inconsistent with the National Contingency Plan ("NCP"), 40 C.F.R. 300. Further, in addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. § 9603, or any other law, regardless of the cause of the release, Purchaser will immediately notify the Regional Duty Officer, Emergency Response Branch, Region 5 at (312) 353-2318, as well as the EPA contacts listed in Section XV (Notices and Submissions) of this Settlement Agreement, of any release at the Site that it becomes aware of.

22. Nothing in the preceding Paragraphs or in this Settlement Agreement shall be deemed to limit any authority of the United States (a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste material on, at, or from the Site, or (b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste material on, at, or from the Site, subject to Section VIII of this Settlement Agreement (United States' Covenant Not to Sue).

23. The Purchaser agrees to cooperate fully with EPA in the on-going implementation of response actions, corrective action, and environmental monitoring at the Site under the terms, provisions and limitations set forth in the General Motors Consent Decree. The Purchaser further agrees not to interfere with such activities. EPA agrees, consistent with its

responsibilities under applicable law, to use reasonable efforts to minimize any interference with the Purchaser's operations by such entry and activities.

24. The Purchaser shall not treat, store, or dispose of Waste material at the Site, or release or cause the release of such Waste material on, to, or from the Site, except in compliance with applicable law.

VII. CERTIFICATION

25. By entering into this Settlement Agreement, the Purchaser certifies that to the best of its knowledge and belief it has fully and accurately disclosed to EPA all information known to Purchaser and all information in the possession or control of its officers, directors, employees, contractors and agents which relates in any way to any Existing Contamination or any past or potential future release of Waste material at or from the Site and to its qualification for this Settlement Agreement. The Purchaser also certifies that to the best of its knowledge and belief it has not caused or contributed to a release or threat of release of Waste material at the Site. If the United States determines that information provided by Purchaser is not materially accurate and complete, this Settlement Agreement, within the sole discretion of the United States, shall be null and void and the United States reserves all rights it may have.

VIII. UNITED STATES' COVENANT NOT TO SUE

26. Subject to the Reservation of Rights in Section IX of this Settlement Agreement, the United States covenants not to sue or take any other civil or administrative action against

Purchaser for any and all civil liability for injunctive relief, or reimbursement of response costs pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 or 9607(a), or Sections 3008(h) or 7003 of RCRA, 42 U.S.C. §§ 6928(h) or 6973, with respect to the Existing Contamination. These covenants not to sue extend only to Purchaser and do not extend to any other person except as provided in Section XIV of this Settlement Agreement (Transfer of Settlement Agreement).

IX. RESERVATION OF RIGHTS

27. The covenant not to sue set forth in Section VIII above does not pertain to any matters other than those expressly specified in Section VIII of this Settlement Agreement (United States' Covenant Not to Sue). The United States reserves, and the Settlement Agreement is without prejudice to, all rights against Purchaser with respect to all other matters, including but not limited to the following:

- (a) claims based on a failure by Purchaser to meet a requirement of this Settlement Agreement, including but not limited to Section V (Access/Cooperation), and Section VI (Due Care) of this Settlement Agreement;

- (b) any liability resulting from past or future releases of Waste material, at or from the Site caused or contributed to by the Purchaser;

- (c) any liability resulting from the exacerbation by Purchaser of Existing Contamination;

- (d) any liability resulting from the release or threat of release of Waste material at the Site after the Effective Date of this Settlement Agreement that are not within the definition of Existing Contamination;

- (e) criminal liability;
- (f) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessment; and
- (g) liability for violations of local, State or federal law or regulations.

28. With respect to any claim or cause of action asserted by the United States, the Purchaser shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

29. Nothing in this Settlement Agreement is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a party to this Settlement Agreement.

30. Nothing in this Settlement Agreement is intended to limit the right of EPA to undertake future response actions at the Site or to seek to compel parties other than the Purchaser to perform or pay for response actions at the Site. Nothing in this Settlement Agreement shall in any way restrict or limit the nature or scope of response actions which may be taken or be required by EPA in exercising its authority under federal law. Purchaser acknowledges that it is purchasing/operating on the Site where response actions may be required.

X. PURCHASER'S COVENANT NOT TO SUE

31. In consideration of the United States' Covenant Not To Sue in Section VIII of this Settlement Agreement, the Purchaser, and if applicable the Transferee, hereby covenants not to sue and not to assert any claims or causes of action against the United States, its authorized officers, employees, or representatives with respect to the Site or this Settlement Agreement, including but not limited to: any direct or indirect claims for reimbursement from the Hazardous Substance Superfund through CERCLA Sections 106(b)(2), 111, 112, 113 or any other provision of law; any claim against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site; Section 7002(a) of RCRA; or any claims arising out of response activities at the Site, including claims based on EPA's oversight of such activities or approval of plans for such activities.

32. The Purchaser reserves, and this Settlement Agreement is without prejudice to, actions against the United States based on negligent actions taken directly by the United States, not including oversight or approval of the Purchaser's plans or activities, that are brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA. Nothing herein shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

33. Except as provided in this Section, Purchaser and its Transferees reserve the right to assert any defenses available to it under applicable law.

XI. PARTIES BOUND

34. This Settlement Agreement shall apply to and be binding upon the United States and shall apply to and be binding upon Purchaser, its officers, directors, and employees. The United States' Covenant Not to Sue in Section VIII and Contribution Protection in Section XVIII of this Settlement Agreement shall apply to Purchaser and its officers, directors, or employees to the extent that the alleged liability of the officer, director, or employee is based on its status and in its capacity as an officer, director, or employee of Purchaser, and not to the extent that the alleged liability arose independently of the alleged liability of the Purchaser. Each signatory of a Party to this Settlement Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and to legally bind such Party.

XII. DISCLAIMER

35. This Settlement Agreement in no way constitutes a finding by EPA as to the risks to human health and the environment which may be posed by contamination at the Site nor constitutes any representation by EPA that the Site is fit for any particular purpose.

XIII. DOCUMENT RETENTION

36. The Purchaser agrees to retain and make available to EPA all site studies and investigations, and documents relating to operations at the Site, for at least ten years, following the effective date of this Settlement Agreement unless otherwise agreed to in writing by the Parties. At the end of ten years, the Purchaser shall notify EPA of the location of such

documents and shall provide EPA with an opportunity to copy any documents at the expense of EPA.

XIV. TRANSFER OF SETTLEMENT AGREEMENT

37. Upon completion of the following conditions, a Transferee of all or a portion of the Site shall have all rights, duties and obligations under Sections V (Access/Cooperation), VI (Due Care), VII (Certification), VIII (United States' Covenant Not to Sue), IX (Reservation of Rights), X (Purchaser's Covenant Not to Sue) and XIII (Document Retention) of this Settlement Agreement:

a. at least five (5) days before the transfer, the Transferee submits to EPA an affidavit, such as that attached as Appendix 3, which identifies the Transferee and the Site to be transferred, describes the proposed transfer, and certifies that:

- i. prior to the Transfer, the Transferee was not and/or is not subject to potential liability under CERCLA, RCRA, and/or any other law for Existing Contamination;
- ii. the Transferee has not caused or contributed to the release or threat of release of any amount of the Existing Contamination;
- iii. the Transferee's use of the Site (or part of the Site, as the case may be) will not result in a release or threat of release of any Waste material except in compliance with law;
- iv. the Transferee's use of the Site (or part of the Site, as the case may be) will not cause or contribute to the migration or new release of any Existing Contamination or

any new threat to human health or the environment caused by any such release or threat of release;

v. the person signing the affidavit is fully authorized to make the foregoing certifications and to legally bind the Transferee; and

vi. the Transferee is bound by all of the requirements, duties, obligations and limitations on the use of and actions at the Site set forth in this Settlement Agreement.

b. EPA must consent in writing to the transfer of the rights, benefits, and obligations conferred under the Settlement Agreement to the Transferee. Any transfer of rights is subject to review and approval by EPA and shall not be effective until such approval is given. EPA agrees that it shall issue such approval, addressed to both Purchaser and the Transferee, promptly upon receipt of each Transferee's affidavit that conforms with the requirements of this Section XIV (Transfer of Settlement Agreement); and

c. Prior to or simultaneous with the transfer of all or a portion of the Site, the Transferee consents in writing to be bound by and perform, from the date of transfer, all of the terms and remaining obligations of the Settlement Agreement applicable to the Purchaser or the applicable transferor.

If the Transferee's affidavit is not materially accurate or complete, or the Transferee fails to meet the obligations and requirements of this Settlement Agreement, the United States' Covenants Not to Sue in Section VIII shall be null and void with respect to the Transferee, and the United States reserves all rights it may have against the Transferee.

38. If all conditions in Paragraph 37 are satisfied, upon transfer of ownership of the Site (or part of the Site, as the case may be), the Purchaser shall be released from the obligations set forth in this Settlement Agreement with respect to the Site or the portion of the Site transferred.

XV. NOTICES AND SUBMISSIONS

39. Documents that must be submitted under this Settlement Agreement, shall be sent by overnight delivery or certified mail, return receipt requested, to the following addressees or to any other addressees which the Purchaser and EPA, designate in writing:

As to the EPA:

Peter Ramanauskas
Remediation and Reuse Branch
Land and Chemicals Division
United States Environmental Protection Agency
77 West Jackson Blvd., mail code: LU-9J
Chicago, Illinois 60604-3590
Phone: (312) 886-7890
E-mail: ramanauskas.peter@epa.gov

Peter Felitti
Assistant Regional Counsel
United States Environmental Protection Agency
77 West Jackson Blvd., mail code: C-14J
Chicago, Illinois 60604-3590
Phone: (312) 886-5114
FAX: (312) 692-2495
E-mail: felitti.peter@epa.gov

The Purchaser:

MI Concourse, LLC
c/o Honigman Miller Schwartz and Cohn LLP
Attn: Lowell Salesin
39400 Woodward Avenue
Suite 101
Bloomfield Hills, MI 48304-5151

Email: lsalesin@honigman.com

Mark Jacobs
Dykema Gossett
400 Renaissance Center
Detroit, MI 48243
Email: mjacobs@dykema.com

A Transferee who complies with Section XIV of this Settlement Agreement (Transfer of Settlement Agreement), shall provide EPA with an address or addresses for notice and submissions.

XVI. EFFECTIVE DATE

40. The Effective Date of this Settlement Agreement shall be the date upon which EPA issues written notice to the Purchaser that EPA has fully executed the Settlement Agreement after review of and response to any public comments received.

XVII. TERMINATION

41. If any Party believes that any or all of the obligations under Section V (Access/Cooperation) are no longer necessary to ensure compliance with the requirements of the Settlement Agreement, that Party may request in writing that the other Party agree to terminate the provision(s) establishing such obligations; provided, however, that the provision(s) in question shall continue in force unless and until the Party requesting such termination receives written agreement from the other party to terminate such provision(s).

XVIII. CONTRIBUTION PROTECTION

42. With regard to claims for contribution against the Purchaser, the Parties hereto agree that this Settlement Agreement is an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Purchaser is entitled to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2) and 122(h)(4), 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), or as may be otherwise provided by law, for “matters addressed” in this Settlement Agreement. The matters addressed in this Settlement Agreement are all response actions taken or to be taken and response costs incurred or to be incurred by the United States or any other person with respect to the Existing Contamination.

43. The Purchaser agrees that with respect to any suit or claim for contribution brought by it for matters related to this Settlement Agreement, it will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

44. The Purchaser also agrees that with respect to any suit or claim for contribution brought against it for matters related to this Settlement Agreement, it will notify in writing the United States within 10 days of service of the complaint on it.

XIX. APPENDICES

45. a. Appendix 1 is the General Motors Consent Decree, as defined in Section II.
- b. Appendix 2 is a map of the Site, as defined in Section II.
- c. Appendix 3 is a copy of the transfer letter, as described in Section XIV.

XX. PUBLIC COMMENT

46. This Settlement Agreement shall be subject to notice in the Federal Register and a thirty-day public comment period, after which EPA may modify or withdraw its consent to this Settlement Agreement if comments received disclose facts or considerations that indicate this Settlement Agreement is inappropriate, improper, or inadequate.

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY:



11.25.13

Richard Karl

Date

Director

Superfund Division

U.S. EPA Region 5

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY:



11/15/2013

Margaret M. Guerriero

Date

Director

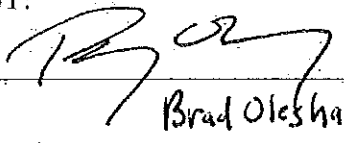
Land and Chemicals Division

U.S. EPA Region 5

IT IS SO AGREED:

M1 CONCOURSE, LLC

BY:


Brad Oleshansky

11/26/13

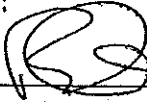
Date

PURCHASER

IT IS SO AGREED:

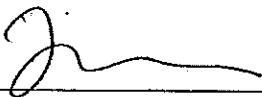
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